

TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-SIXTH LEGISLATURE, 2012

ON THE FOLLOWING MEASURE:

H.B. NO. 2852, RELATING TO LANDOWNER LIABILITY.

BEFORE THE:

HOUSE COMMITTEE ON THE JUDICIARY

DATE: Thursday, February 16, 2012

TIME: 2:40 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill but has concerns that the bill is vague and overly broad. Also, because some of the terms are not clearly defined, it may result in unintended consequences.

This bill seeks to allow a person to be held personally liable in damages for injury or trespass, whether direct or indirect, including the diminution of property valuation, to the person or property of another person proximately caused by the maintenance of a property nuisance that, among other things, constitutes "visual blight," creates a "blighted condition," or is "offensive to the senses."

What constitutes "visual blight" or a "blighted condition," or what is "offensive to the senses," is subjective and is not clearly defined. What one person considers offensive or to be "visual blight" or a "blighted condition" may not be viewed the same way by anyone else.

Moreover, the bill has the potential to impose liability on what are currently legitimate and valid uses of property.

There are many considerations as to how the goals intended by this bill could be accomplished and we would recommend further review and discussion.

DEPARTMENT OF ENVIRONMENTAL SERVICES
CITY AND COUNTY OF HONOLULU

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DEPUTY DIRECTOR

ROSS S. TANIMOTO, P.E.
DEPUTY DIRECTOR

IN REPLY REFER TO:
WAS 12-34

February 15, 2012

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Committee on Judiciary
State House
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill 2852, Relating to Landowner Liability

The City and County of Honolulu, Department of Environmental Services, opposes House Bill (HB) 2852, Relating to Landowner Liability, in its current form.

The bill is related to "maintaining a property nuisance" providing for personal liability for the conditions of maintaining a property nuisance.

The bill is overly broad and does not take into consideration appropriately zoned, permitted, and designated uses that would result in the property nuisance conditions being met. For example, as written, the bill would appear to apply to City refuse convenience centers, refuse transfer stations, landfills, baseyards, wastewater treatment plants and pumping stations, and construction baseyards, all of which are appropriately designated and permitted uses that exist for the public benefit.

If this bill were to proceed, it needs to be clarified as to what limited properties are to be affected.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Steinberger", is written over a horizontal line.

Timothy E. Steinberger, P.E.
Director

**DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 11TH FLOOR
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PETER B. CARLISLE
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CHRIS TAKASHIGE, P.E.
DEPUTY DIRECTOR

February 15, 2012

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
House Committee on Judiciary
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill No. 2852, Relating to Landowner Liability

The Department of Design and Construction (DDC) respectfully offers the following comments on HB 2852. The bill proposes to assign liability for direct and indirect damages caused by maintenance of a property nuisance. The term, "maintenance of a property nuisance" is defined in the bill by defining a broad spectrum of conditions, including storage of certain construction materials.

DDC has no objection to the general intent of the bill. However, it is strongly recommended that all government construction and maintenance activities, and conditions related to such activities, be exempted from the offense of maintaining a property nuisance.

As written, the offense of maintaining a property nuisance could potentially apply to conditions related to activities at City construction projects. It is noted that §663-____ (c)(1)(C) of the bill exempts storage of construction materials for a construction project with an active building permit. However, many City construction projects do not require a building permit, so a contractor's staging area for road work or utility work, for instance, could potentially be prosecuted as an offense under this bill.

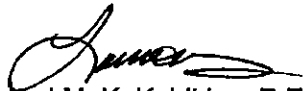
Also, normal operations at many City baseyards, although not operated by DDC, could potentially constitute offenses under this bill.

The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members
February 15, 2012
Page 2

For these reasons, we respectfully recommend that HB 2852 be amended to exempt conditions related to government construction, maintenance, and operational activities from the offense of maintaining a property nuisance.

Thank you for the opportunity to testify.

Very truly yours,

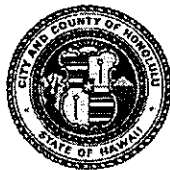
A handwritten signature in black ink, appearing to read "Lori M. K. Kahikina", with a stylized flourish extending to the right.

Lori M. K. Kahikina, P.E.
Director

DEPARTMENT OF FACILITY MAINTENANCE
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



WESTLEY K.C. CHUN, Ph.D., P.E., BCEE
DIRECTOR & CHIEF ENGINEER

KENNETH A. SHIMIZU
DEPUTY DIRECTOR

IN REPLY REFER TO:

February 15, 2012

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members of the Judiciary Committee
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 302
Honolulu, HI 96813

Dear Chair Keith-Agaran and Members:

Subject: House Bill 2852, Relating to Landowner Liability

The Department of Facility Maintenance (DFM), City and County of Honolulu, respectfully opposes House Bill 2852, Relating to Landowner Liability, in its current form.

Bill 2852 establishes personal liability for maintenance of a property nuisance. As written, the bill is overly broad and does not appear to exempt properly designated government maintenance and repair operations. The Department is concerned that legitimate island wide City activities which operate throughout Oahu at facilities such as road maintenance baseyards, automotive equipment repair yards, and street lighting and other trades facilities, may be adversely impacted. City and County operations such as these serve a legitimate government function for the public benefit.

For these reasons, DFM respectfully requests that HB 2852 be amended to exempt government facilities from the conditions of maintenance of a property nuisance.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "for Westley K. C. Chun".

Westley K. C. Chun, Ph.D., P.E., BCEE
Director and Chief Engineer



IN REPLY REFER TO:
CMS-AP00-00136

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Kenneth Toru Hamayasu, P.E.
INTERIM EXECUTIVE DIRECTOR AND CEO

February 15, 2012

VIA Email: JUDtestimony@Capitol.hawaii.gov

The Honorable Gilbert S. C. Keith-Agaran, Chair
The Honorable Karl Rhoads, Vice Chair
and Members of the Committee on Judiciary
House of Representatives
Hawaii State Capitol
Honolulu, Hawaii 96813

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Dear Chair Keith-Agaran, Vice Chair Rhoads, and Representatives:

Subject: HB 2852 Relating to Landowner Liability
Committee on Judiciary
Thursday, February 16, 2012, at 2:40 PM

The Honolulu Authority for Rapid Transportation (HART) has the following concerns regarding the current language of House Bill 2852.

The intent of House Bill 2852 is to create a cause of action against any person who maintains a property nuisance that causes injury or damage to the person or property of another person. HART is concerned that the bill makes no provisions for exemption of public projects that are under construction, such as the Honolulu High-Capacity Transit Corridor, highway, or utility projects where there are construction yards or areas where materials and waste are stored until reuse or disposal. In addition, this measure may affect several right-of-way acquisitions that HART is obtaining, as some of these properties have structures on them that may already be in blighted condition or, if not demolished immediately, may deteriorate into this state.

It is for these reasons that HART requests language be added to provide an exemption for government facilities.

Thank you for your consideration.

Sincerely,


Kenneth Toru Hamayasu
Interim Executive Director and CEO

cc: HART Board

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A LIMITED LIABILITY LAW COMPANY



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February 15, 2012

Chair Gilbert S.C. Keith-Agaran
House Committee on Judiciary
415 South Beretania Street, Room 302
Honolulu, Hawaii 96813

Re: House Bill No. 2852 (Relating to Landowner Liability)

Dear Chair Keith-Agaran:

My name is Nathan Natori and I represent Insurance Auto Auctions ("IAA"), a licensed motor vehicle dealer which handles the sale of damaged and theft-recovered vehicles for the insurance industry. IAA opposes House Bill No. 2852 because it would characterize IAA's existing business at the Campbell Industrial Park as a property nuisance.

Salvage Vehicle Auctions

After an accident, if the car is not drivable, the car is typically transported to a repair facility or a towing and storage facility. If an insurance adjuster determines that the vehicle is a total-loss, the vehicle is then transported to a salvage auction where it is stored for some period of time until the proper title is received and the car is sold.

Salvage vehicle auctions and auto dismantling yards play an important role in the lawful disposal of wrecked vehicles. These industries have been providing local employment, consumer service, and environmental conservation for many decades. Salvage auctions and automobile dismantling yards are already subject to rigorous state and local licensing requirements.

Potential Violations Under House Bill No. 2852

Because IAA is in the business of selling "totaled" vehicles for the insurance industry, the auction vehicles many times are a mess, and could be considered a visual blight to some. Section 663- ____ (c)(1) basically provides that a person commits the offense of maintaining a property nuisance if the person stores wrecked motor vehicles and the vehicles can be seen by anyone nearby. This provision would affect businesses such as salvage auctions, body shops, towing and storage facilities, auto recyclers, rental car companies and probably others.



ATTORNEYS

The exception in Section 663-____(c)(3) does not resolve the problem because while IAA is located in an industrial zone, it is not operating a junk yard or automobile dismantling yard. The author of the bill probably intended this carve out of industrial zoned businesses to apply to the entire proposed new section, but the language of the bill fails to do so as there is no general exemption.

Thus, IAA's existing business in the Campbell Industrial Park would be characterized as a property nuisance.

The only comfort could come from Section 663-____(b), because although IAA's existing business would be characterized as a property nuisance, Section 663-____(b) appears to provide the person asserting the claim is entitled to treble damages only if the property nuisance involves "three or more separate properties within a one mile radius". The problem is this language is unclear whether three separate Tax Map Key parcels adjoining each other would be carved out, or whether the properties must be physically separated by other parcels to be exempt from being liable for treble damages.

For the reasons described above, **IAA opposes House Bill No. 2852 and requests it be held, or at minimum amended as follows:**

On page 4, after line 22 add:

(10) Nothing in this section shall apply to:

(a) an auction that handles the disposition of abandoned, wrecked or dismantled motor vehicles or boats or vessels; or

(b) a person who holds a license in an automotive-related business, which license has been issued by the state or any county or city in the state.

Please feel free to contact me should you have any comments or questions regarding the above.

Very truly yours,

Natori Law Office LLLC

Nathan T. Natori

PAUL CASSIDAY
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February 15, 2012

Hawaii State Legislature
House Judiciary Committee

Dear Committee Members,

I write in support of House Bill 2852 from an economic and public policy point of view. I also write as someone who is familiar with the condition it addresses - I live in Kahala, and have lived in one of the beach houses that is currently in complete disrepair (on the Koko Head side of the Hunakai Street right of way).

If you would follow my reasoning here, to wit:

- The state and county economy benefits greatly by the visitor industry, which is the primary driver of our commercial activity; and,
- This industry is successful nationally and globally primarily due to comparative advantage, which comprises of the striking and unique beauty of our land and the gentleness and social harmony of our people.

Thus, it follows that any behavior or practice that undermines the beauty of our island, be it natural or man-made (gardening, etc.), should be discouraged. Similarly, any behavior or practice that sows distress, disharmony, or any similar discord amongst people of the islands, particularly neighbors, should be discouraged.

Against these principles of economic productivity and social harmony exist the practice of a landowner that allowed a number of properties in my neighborhood to deteriorate in a most extreme (and distressing) fashion. In particular, I point to the properties on either side of the Hunakai Street right of way, where I used to live. Prior to the current owner, all of the four residences were cared for and kept up. Under the current owner, the maintenance and care for the houses completely ceased, such that several of the structures collapsed and the gardens were overcome with scrub and weeds.

These properties are located on the major thoroughfare in the neighborhood, which also happens to be the road leading between two of the three most popular visitor sites on the island, Diamond Head and Haunama Bay. As such, a very large percentage of the visitors we depend on for our livelihood are subjected to the sight of property neglect and physical deterioration. The same can be said by those of us living in the neighborhood.

The fall-out from this is two fold: visual pollution and social disharmony (at least amongst the local folks who frequent this area).

To be sure, this condition and what falls from it is not life threatening.

On the other hand, nor are they insignificant, particularly over the long run. One only has to review the record in the neighborhood (the neighborhood board) and in the larger community (the news papers and TV news shows). And it has been a long run: years and years and years.

And, to be fair, there are signs that this condition is being addressed. This is to be applauded. And, given the background I've described above, this bill is to be applauded. As such, I reiterate my support.

Thank you for your consideration of my opinion,

Yours truly,



To: Chair Kieth-Agaran and Vice Chair Rhodes

From: F.M. Scotty Anderson

Subj: HB 2852

As a member of the Waialae-Kahala Neighborhood Board for 6 years and its current Chair, I can speak for Neighborhood Board 3 in that the Board strongly supports this legislation. We have passed several measures in support of this type of legislation to both the City and County of Honolulu and to the state.

This type of situation faces members of our community constantly. The problems caused by these properties endanger public health and undermine property values.

We strongly urge passage of HB 2852 which should be directed to those who own 5 properties and who have had violations in the past 5 years.

F.M. Scotty Anderson
2435 Aha Aina Place
Honolulu, Hi 96821
737-7317